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The Honorable John C. Coughenour

NOV 26 2019

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

NICHOLAS "NIKKI" ARMSTRONG,

Defendant.

NO. CR19-243 JCC

**PLEA AGREEMENT**

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Marie M. Dalton, Assistant United States Attorney for said District, NICHOLAS "NIKKI" ARMSTRONG and her attorney, Corey Endo, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B):

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

2. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charges contained in the Information.

1 a. Trafficking in Counterfeit Drugs, as charged in Counts 1, 2 and 3, in  
2 violation of Title 18, United States Code, Section 2320(a)(4).

3 By entering a plea of guilty, Defendant hereby waives all objections to the form of  
4 the charging document. Defendant further understands that before entering her guilty  
5 plea, she will be placed under oath. Any statement given by Defendant under oath may  
6 be used by the United States in a prosecution for perjury or false statement.

7 3. **Elements of the Offense.** The elements of the offense of Trafficking in  
8 Counterfeit Drugs, as charged in Counts 1, 2, and 3, in violation of Title 18, United States  
9 Code, Section 2320(a)(4), are as follows:

- 10 a. The defendant trafficked in a counterfeit drug;  
11 b. The defendant knew the drug was counterfeit; and  
12 c. Such trafficking was intentional.  
13

14 4. **The Penalties.** Defendant understands that the statutory penalties  
15 applicable to the offenses to which she is pleading guilty are as follows:

16 a. For each of the offenses of Trafficking in Counterfeit Drugs, as  
17 charged in Counts 1, 2, and 3: A maximum term of imprisonment of up to 20 years, a  
18 fine of up to \$5,000,000, a period of supervision following release from prison of up to  
19 three years, and a mandatory special assessment of \$100 dollars. If a probationary  
20 sentence is imposed, the probation period can be for up to five (5) years. Defendant  
21 agrees that the special assessment shall be paid at or before the time of sentencing.

22 Defendant understands that supervised release is a period of time following  
23 imprisonment during which she will be subject to certain restrictive conditions and  
24 requirements. Defendant further understands that if supervised release is imposed and  
25 she violates one or more of the conditions or requirements, Defendant could be returned  
26 to prison for all or part of the term of supervised release that was originally imposed.  
27 This could result in Defendant's serving a total term of imprisonment greater than the  
28 statutory maximum stated above.

Defendant understands that as a part of any sentence, in addition to any term of imprisonment and/or fine that is imposed, the Court may order Defendant to pay restitution to any victim of the offense, as required by law. Defendant further understands that a consequence of pleading guilty may include the forfeiture of certain property either as a part of the sentence imposed by the Court, or as a result of civil judicial or administrative process. Defendant agrees that any monetary penalty the Court imposes, including the special assessment, fine, costs, or restitution, is due and payable immediately and further agrees to submit a completed Financial Statement of Debtor form as requested by the United States Attorney's Office.

5. **Rights Waived by Pleading Guilty.** Defendant understands that by pleading guilty, she knowingly and voluntarily waives the following rights:

- a. The right to plead not guilty and to persist in a plea of not guilty;
- b. The right to a speedy and public trial before a jury of her peers;
- c. The right to the effective assistance of counsel at trial, including, if Defendant could not afford an attorney, the right to have the Court appoint one for ~~him~~ <sup>her</sup>; *mp*
- d. The right to be presumed innocent until guilt has been established beyond a reasonable doubt at trial;
- e. The right to confront and cross-examine witnesses against Defendant at trial;
- f. The right to compel or subpoena witnesses to appear on her behalf at trial;
- g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and
- h. The right to appeal a finding of guilt or any pretrial rulings.

6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

7. **Forfeiture of Assets.** Defendant agrees to forfeit to the United States immediately Defendant's right, title, and interest in any and all property, real or personal, that was used, or intended to be used, in any manner or part, to commit, or facilitate the commission, of that offense, and also shall forfeit any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the commission of that offense, including but not limited to a judgment for a sum of money representing the property described in this paragraph.

8. **Statement of Facts.** The parties agree on the following facts. Defendant admits she is guilty of the charged offenses:

a. From at least June 2018, ARMSTRONG sold counterfeit Xanax, along with other products, on the dark web, including on Wall St. Market, Empire Market, and Nightmare Market. On these marketplaces, ARMSTRONG advertised Xanax bars, displaying pictures of pills imprinted with the word Xanax. Among other dates, on or about March 4, 2019, April 24, 2019, and May 14, 2019, ARMSTRONG sold pills advertised as Xanax bars to her customers, accepting cryptocurrency for payment, and delivering those pills by shipping them through the mail. In total, on the dark web, ARMSTRONG sold more than 19,000 pills that were advertised as 2 mg Xanax bars, 1,500 pills that were advertised as 4 mg Xanax bars, and 25 pills that were advertised as 4 mg Xanax bars.

b. Although ARMSTRONG advertised these pills as Xanax bars, and the pills contained many of the same attributes of Xanax bars (including their size, shape, and Xanax imprint), ARMSTRONG knew they were counterfeit. The Xanax bars that ARMSTRONG sold were not produced by Pfizer Pharmaceuticals, which manufactures Xanax. Instead, ARMSTRONG intentionally sold counterfeit Xanax, which was created by ARMSTRONG using a pill press and a drug that is chemically related to Xanax, but which is not scheduled or trademarked. In addition to the Xanax pills sold online, ARMSTRONG possessed an additional 106.6 grams of powder in her home that she intended to press into Xanax bars and sell on the dark web. In total, ARMSTRONG earned, and if the powder were pressed would have earned, at least \$70,000 from selling counterfeit Xanax.

c. The parties agree that the Court may consider additional facts contained in the Presentence Report (subject to the standard objections by the parties) and/or that may be presented by the United States or the Defendant at the time of sentencing, and that the factual statement contained herein is not intended to limit the facts that the parties may present to the Court at the time of sentencing.

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2           **9. United States Sentencing Guidelines.** Defendant understands and  
3 acknowledges that the Court must consider the sentencing range calculated under the  
4 United States Sentencing Guidelines and possible departures under the Sentencing  
5 Guidelines together with the other factors set forth in Title 18, United States Code,  
6 Section 3553(a), including: (1) the nature and circumstances of the offenses; (2) the  
7 history and characteristics of the defendant; (3) the need for the sentence to reflect the  
8 seriousness of the offenses, to promote respect for the law, and to provide just  
9 punishment for the offenses; (4) the need for the sentence to afford adequate deterrence to  
10 criminal conduct; (5) the need for the sentence to protect the public from further crimes  
11 of the defendant; (6) the need to provide the defendant with educational and vocational  
12 training, medical care, or other correctional treatment in the most effective manner; (7)  
13 the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the  
14 need to avoid unwarranted sentence disparity among defendants involved in similar  
15 conduct who have similar records. Accordingly, Defendant understands and  
16 acknowledges that:

17           a. The Court will determine applicable Defendant's Sentencing  
18 Guidelines range at the time of sentencing;

19           b. After consideration of the Sentencing Guidelines and the factors in  
20 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the  
21 maximum term authorized by law;

22           c. The Court is not bound by any recommendation regarding the  
23 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
24 range offered by the parties or the United States Probation Department, or by any  
25 stipulations or agreements between the parties in this Plea Agreement; and

26           d. Defendant may not withdraw her guilty pleas solely because of the  
27 sentence imposed by the Court.  
28

10. **Acceptance of Responsibility.** At sentencing, *if* the district court concludes Defendant qualifies for a downward adjustment acceptance for acceptance of responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or greater, the United States will make the motion necessary to permit the district court to decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has assisted the United States by timely notifying the United States of her intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

11. **Sentencing Factors.** The parties agree that the following Sentencing Guidelines provisions apply to this case:

- a. The base offense level is eight under USSG § 2B5.3(a);
- b. A two-level increase under USSG § 2B5.3(b)(5) because the offense involved counterfeit drugs; and
- c. A six-level increase under USSG § 2B5.3(b)(1) because the infringement amount exceeded \$40,000.

The parties agree they are free to present arguments regarding the applicability of all other provisions of the United States Sentencing Guidelines. Defendant understands, however, that at the time of sentencing, the Court is free to reject these stipulated adjustments, and is further free to apply additional downward or upward adjustments in determining Defendant's Sentencing Guidelines range.

12. **Recommendation Regarding Imprisonment.** Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the United States agrees to recommend that the appropriate term of imprisonment to be imposed by the Court at the time of sentencing is twelve months and one day. Defendant remains free to recommend any sentence she believes appropriate at sentencing.

Defendant understands that this recommendation is not binding on the Court and the Court may reject the recommendation of the parties and may impose any term of

1 imprisonment up to the statutory maximum penalty authorized by law. Defendant  
2 further understands that she cannot withdraw her guilty plea simply because of the  
3 sentence imposed by the district court. Except as otherwise provided in this plea  
4 agreement, the parties are free to present arguments are regarding any other aspect of  
5 sentencing.

6       13.   **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,  
7 the United States Attorney's Office for the Western District of Washington agrees not to  
8 prosecute Defendant for any additional offenses known to it as of the time of this  
9 Agreement that are based upon evidence in its possession at this time, and that arise out  
10 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the  
11 United States has agreed not to prosecute all of the criminal charges the evidence  
12 establishes were committed by Defendant solely because of the promises made by  
13 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing  
14 the Presentence Report, the United States Attorney's Office will provide the United  
15 States Probation Office with evidence of all conduct committed by Defendant.

16       Defendant agrees that any charges to be dismissed before or at the time of  
17 sentencing were substantially justified in light of the evidence available to the United  
18 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant  
19 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119  
20 (1997).

21       14.   **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if  
22 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea  
23 Agreement and Defendant may be prosecuted for all offenses for which the United States  
24 has evidence. Defendant agrees not to oppose any steps taken by the United States to  
25 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea  
26 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,  
27 Defendant has waived any objection to the re-institution of any charges in the Indictment  
28 that were previously dismissed or any additional charges that had not been prosecuted.



Defendant further understands that if, after the date of this Agreement, Defendant should engage in illegal conduct, or conduct that violates any conditions of release or the conditions of her confinement, (examples of which include, but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the Pretrial Services Officer, Probation Officer, or Court), the United States is free under this Agreement to file additional charges against Defendant or to seek a sentence that takes such conduct into consideration by requesting the Court to apply additional adjustments or enhancements in its Sentencing Guidelines calculations in order to increase the applicable advisory Guidelines range, and/or by seeking an upward departure or variance from the calculated advisory Guidelines range. Under these circumstances, the United States is free to seek such adjustments, enhancements, departures, and/or variances even if otherwise precluded by the terms of the plea agreement.

**15. Waiver of Appellate Rights and Rights to Collateral Attacks.**

Defendant acknowledges that by entering the guilty plea(s) required by this plea agreement, Defendant waives all rights to appeal from her conviction and any pretrial rulings of the court. Defendant further agrees that, provided the court imposes a custodial sentence that is within or below the Sentencing Guidelines range (or the statutory mandatory minimum, if greater than the Guidelines range) as determined by the court at the time of sentencing, Defendant waives to the full extent of the law:

a. Any right conferred by Title 18, United States Code, Section 3742, to challenge, on direct appeal, the sentence imposed by the court, including any fine, restitution order, probation or supervised release conditions, or forfeiture order (if applicable); and

b. Any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation; and



1 This waiver does not preclude Defendant from bringing an appropriate motion  
2 pursuant to 28 U.S.C. § 2241, to address the conditions of her confinement or the  
3 decisions of the Bureau of Prisons regarding the execution of her sentence.

4 If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
5 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
6 any way, the United States may prosecute Defendant for any counts, including those with  
7 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
8 Agreement.

9 16. **Voluntariness of Plea.** Defendant agrees that she has entered into this Plea  
10 Agreement freely and voluntarily and that no threats or promises, other than the promises  
11 contained in this Plea Agreement, were made to induce Defendant to enter her plea of  
12 guilty.

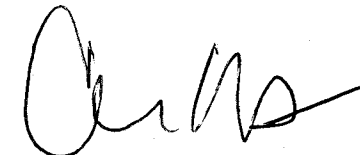
13 17. **Statute of Limitations.** In the event this Agreement is not accepted by the  
14 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,  
15 the statute of limitations shall be deemed to have been tolled from the date of the Plea  
16 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea  
17 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of  
18 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.  
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1        18.    **Completeness of Agreement.** The United States and Defendant  
2 acknowledge that except as may be stated on the record during the plea colloquy in this  
3 matter, these terms constitute the entire Plea Agreement between the parties. This  
4 Agreement binds only the United States Attorney's Office for the Western District of  
5 Washington. It does not bind any other United States Attorney's Office or any other  
6 office or agency of the United States, or any state or local prosecutor.

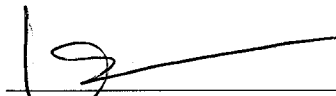
7        Dated this 26<sup>th</sup> day of November, 2019.

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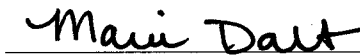
11        NICHOLAS "NIKKI" ARMSTRONG  
12        Defendant

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14        

15        COREY ENDO  
16        Attorney for Defendant

17  
18        

19        KATHERYN FRIERSON  
20        Assistant United States Attorney

21  
22        

23        MARIE M. DALTON  
24        Assistant United States Attorney